

**Filed 6/1/06 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2006 ND 112

David Robert Kunze,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

Nos. 20050376-20050379

Appeal from the District Court of Barnes County, Southeast Judicial District,
the Honorable John E. Greenwood, Judge.

AFFIRMED.

Per Curiam.

David Robert Kunze, pro se, James River Correctional Center, 2521 Circle
Drive, Jamestown, N.D. 58401, petitioner and appellant; submitted on briefs.

Bradley A. Cruff, State's Attorney, Courthouse, 230 4th Street NW, Rm. 301,
Valley City, N.D. 58072, for respondent and appellee; submitted on briefs.

Kunze v. State
Nos. 20050376-20050379

Per Curiam.

[¶1] David Robert Kunze appeals from a trial court’s summary denial of his motion for an evidentiary hearing and motion to vacate the criminal judgments against him. The motion was made after the trial court denied Kunze’s second application for post-conviction relief.

[¶2] In 1999, Kunze pled guilty to theft of property, burglary, escape, and motor vehicle theft. He directly appealed his conviction to this Court, but that appeal was dismissed for failure to file a brief. In 2002, Kunze filed an application for post-conviction relief, which the trial court denied. On March 28, 2005, Kunze again petitioned for post-conviction relief. On September 30, 2005, the trial court denied Kunze’s motion finding that his due process, involuntary plea, ineffective assistance of counsel, and exculpatory evidence claims were barred by res judicata; that there was no basis for relief under the Uniform Post-Conviction Procedure Act for his claim he was entitled to direct review or his claim he was illegally sentenced in a different county than he was charged in; and that evidence he claimed the State had withheld from him had in fact been given to his lawyer. On October 10, 2005, Kunze filed a “Motion for Evidentiary Hearing and to Vacate Said Judgments.” Kunze’s motion was denied summarily on October 17, 2005.

[¶3] The trial court’s summary denial is based on findings of fact that are not clearly erroneous and is supported by the record. We affirm under N.D.R.App.P. 35.1(a)(2) and (6).

[¶4] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner